HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Saturday, May 20, 2017
85th Legislature, Number 76
The House convenes at 10:30 a.m.
Part Two

Thirty-five bills are on the daily calendar for second-reading consideration today. Those analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
85(R) - 76

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Saturday, May 20, 2017

85th Legislature, Number 76

Part 2

SUBJECT: Transferring and renaming developmental disability office

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Raymond, Klick, Miller, Minjarez, Rose, Wu

0 nays

3 absent — Frank, Keough, Swanson

SENATE VOTE: On final passage, April 24 — 25-5 (Burton, Creighton, Hall, Huffines, V. Taylor)

WITNESSES: *On House companion bill, HB 3842*:
For — Jonathan Meyer, FASD Collaborative; Greg Hansch, National Alliance on Mental Illness, Texas; Ashley Givens; Jerry Roberson; (*Registered, but did not testify*: Liz Garbutt, Children's Defense Fund, Texas; Chris Masey, Coalition of Texans with Disabilities; Jeff Miller, Disability Rights Texas; Gyl Switzer, Mental Health America of Texas; Christine Yanas, Methodist Healthcare Ministries of South Texas; Will Francis, National Association of Social Workers, Texas Chapter; Adriana Kohler, Kate Murphy, and Josette Saxton, Texans Care for Children; Sarah Crockett, Texas CASA; Andrew Cates, Texas Nurses Association; Lee Nichols, TexProtects; Kyle Piccola, the Arc of Texas; James Thurston, United Ways of Texas; Sheryl Draker; Maria Person)

Against — None

On — Colleen Horton, Hogg Foundation for Mental Health; Janet Sharkis, Texas Office for Prevention of Developmental Disabilities

BACKGROUND: The Texas Office for the Prevention of Developmental Disabilities is a joint private-public initiative administratively attached to the Health and Human Services Commission (HHSC) and governed by Human Resources Code, ch. 112, subch. C. Its duties include educating the public and promoting sound public policy on the prevention of developmental disabilities and collecting data on the causes, prevalence, and

preventability of developmental disabilities.

The Office for the Prevention of Developmental Disabilities is scheduled to be abolished as a separate entity and transferred to the Health and Human Services Commission by September 1, 2017. Once the commission assumes the duties of the office, the office's executive committee and board of advisors will be abolished.

DIGEST:

SB 1743 would abolish the Office for the Prevention of Developmental Disabilities as an independent office, transfer it to the University of Texas at Austin as a program, and rename it as the Office for Healthy Children. The office no longer would be subject to consolidation with the Health and Human Services Commission (HHSC). Provisions governing the office under Human Resources Code, ch. 112, subch. C would be transferred to the Education Code and amended to reflect these changes.

The office's executive committee, board of advisors, and position of executive director would be abolished when the bill took effect. The president of UT Austin or a designee could hire the person serving as the executive director immediately before the role was abolished for a position in the office. Employees of the office would become employees of the university.

SB 1743 would require all money, contracts, leases, rights, obligations, and property of the office and all funds appropriated to it by the Legislature to be transferred to UT Austin. All funds accepted by the office from gifts, donations, and grants of money from public and private sources would be administered by the university. The bill would require the university to maintain a separate accounting of these funds.

SB 1743 would not affect the validity of any action taken by the office, including by the executive committee or board of advisors, before the bill's effective date. Any action or proceeding pending before the office on the effective date of the bill would become an action or proceeding before the university. In addition, a rule, form, policy, procedure, or decision of the office or of HHSC related to the office would continue in effect as a rule, form, policy, procedure, or decision of the University of Texas System until superseded.

The bill would take effect August 31, 2017.

SUPPORTERS SAY:

SB 1743 would ensure that the important work of the Texas Office for the Prevention of Developmental Disabilities could continue while still accomplishing the consolidation efforts of the health and human services Sunset legislation from 2015. The bill would transfer the office to the University of Texas at Austin, rather than to the Health and Human Services Commission, and rename it as the Office for Healthy Children. Currently, the office is a pseudo-governmental organization that is mostly self-funded. If the office were subsumed into the Health and Human Services Commission (HHSC) without dedicated funding or staff, its duties could be compromised.

All aspects of the office's operations as part of the university would be supported through its fundraising activities. The board of regents would not be allowed to submit a legislative appropriations request for general revenue funds for the office, and the university would have to maintain a separate accounting of funds raised. If the office could not raise enough money to support itself, it would cease functioning. However, being under the umbrella of the university could improve the office's fundraising opportunities.

SB 1743 would support the office's purpose of protecting Texas children from preventable developmental disabilities and provide a sustainable solution for the office. Transferring the office to UT Austin also would allow it to collaborate with entities at the university working on similar issues. Every developmental disability that is avoided or minimized as a result of the office's work provides a cost savings to the state.

OPPONENTS SAY:

Preserving the Office for the Prevention of Developmental Disabilities and continuing its functions could circumvent the process established to eliminate duplicative or unnecessary government agencies. The Sunset legislation requiring the office to be abolished as a separate entity and transferred to HHSC should be respected. Under the bill, the office still could be a cost to the state. It would continue to have overhead and staff retirement costs, and if it did not raise enough money to support itself, its operating expenses could come from the university's budget.

NOTES: A companion bill, HB 3842 by Hinojosa, was reported favorably by the House Human Services Committee on April 25 and placed on the House General State Calendar for May 10.

SUBJECT: Creating a city of Amarillo hospital district provider participation program

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 8 ayes — Coleman, Springer, Biedermann, Neave, Roberts, Stickland, Thierry, Uresti

0 nays

1 absent — Hunter

SENATE VOTE: On final passage, May 4 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: The Medicaid sec. 1115 transformation waiver is a five-year demonstration project in effect through December 2017. The sec. 1115 waiver provides supplemental funding to certain Medicaid providers in Texas through the uncompensated care pool and the Delivery System Reform Incentive Payment (DSRIP) pool. The Health and Human Services Commission has requested an additional 21-month extension of the sec. 1115 waiver, through September 30, 2019.

The uncompensated care pool payments help offset the costs of uncompensated care, including indigent care, provided by local hospitals. DSRIP pool payments are incentives to hospitals and other providers to improve the health of patients and enhance access to and the quality and cost-effectiveness of health care.

Under the sec. 1115 waiver, eligibility for the uncompensated cost pool or DSRIP pool requires participation in a regional health care partnership, in which governmental entities, Medicaid providers, and other stakeholders develop a regional plan. Governmental entities must provide public funds called intergovernmental transfers to draw down funds from these pools.

Since 2013, the Legislature has authorized several counties and one city to create a local provider participation fund to access federal matching funds

under the sec. 1115 waiver.

DIGEST:

SB 2117 would specify that the purpose of the bill would be to authorize the district to administer a health care provider participation program to provide additional compensation to hospitals in the district by collecting mandatory payments from each hospital in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other authorized purposes.

The bill would allow the board of hospital managers for the Amarillo hospital district to authorize the district to participate in a health care provider participation program if a majority of the board voted for it. If the board authorized the Amarillo hospital district to participate in the health care provider participation program, the board:

- could require an annual mandatory payment to be assessed on the net patient revenue of each non-public hospital that provided inpatient hospital services that was located in the district; and
- would require each non-public hospital that provided inpatient hospital services to submit a copy of any financial and utilization data required by and reported to the Department of State Health Services.

The mandatory payment would be collected at least annually but not more often than quarterly. In the first year of requiring the mandatory payment, the payment would be assessed on the net patient revenue for a hospital as reported to the Department of State Health Services. If the hospital did not report any data, the net patient revenue would be the amount of the revenue in the hospital's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the hospital submitted the Medicare cost report. The district would update the amount of the mandatory payment annually. The district could contract for the assessment and collection of mandatory payments under the bill. The bill would specify other requirements for the mandatory payment.

The aggregate amount of the mandatory payments could not exceed 6 percent of the aggregate net patient revenue of all paying hospitals in the district. The board of hospital managers for the Amarillo hospital district

would be required to set the mandatory payments to an amount that would together generate sufficient revenue to cover the administrative expenses of the district related to the bill, fund an intergovernmental transfer, or make other payments authorized under the bill. The amount of revenue from mandatory payments that could be used for administrative expenses could not exceed $25,000, plus the cost of collateralization of deposits.

If the board demonstrated to the paying hospitals that the costs did exceed $25,000 in any year, the Amarillo hospital district could use additional revenue from mandatory payments received under the health care provider participation program to compensate the district for its administrative expenses. A paying hospital could not unreasonably withhold consent to compensate the district for administrative expenses. A paying hospital also could not add a mandatory payment as a surcharge to a patient or insurer. A mandatory payment under the bill would not be a tax under applicable Texas law.

In each year that the board authorized a health care provider participation program, the bill would require the board to hold a public hearing on the amounts of any mandatory payments that the board intended to require during that year and how the revenue from those payments would be spent. The bill would require the board to publish notice of the hearing at least five days before the hearing in a newspaper in general circulation in the district. The board would also be required to give written notice of the hearing to the chief operating officer of each non-public hospital providing inpatient hospital services in the district.

The bill would specify how the collected funds would be deposited and secured. The bill would specify what the local provider participation fund would include and how the funds would be deposited and secured.

Money deposited to the local provider participation fund only could be used to:

- fund intergovernmental transfers from the Amarillo hospital district to the state to provide the non-federal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the sec. 1115 waiver, or a successor waiver

program authorizing similar Medicaid supplemental payment programs, or payments to Medicaid managed care organizations that were dedicated for payment to hospitals;

- pay costs associated with indigent care provided by non-public hospitals that provided inpatient hospital services in the district;
- pay the administrative expenses of the district;
- refund a portion of a mandatory payment collected in error; and
- refund to paying hospitals a proportionate share of the money that the district received from the Health and Human Services Commission that was not used to fund the nonfederal share of Medicaid supplemental payment program payments or that the district determined could not be used to fund the nonfederal share of the payments.

The bill would specify that the money in the local provider participation fund could not be commingled with other district funds and that money from intergovernmental transfers could not be used by the Amarillo hospital district or another entity to expand Medicaid coverage under the federal Affordable Care Act.

If any provision or procedure under the bill caused a mandatory payment to be ineligible for federal matching funds, the board could provide by rule an alternative provision or procedure that conformed to federal Medicaid and Medicare requirements. A rule adopted under the bill could not create, impose, or materially expand the legal or financial liability or responsibility of the district or a non-public hospital that provided inpatient hospital services in the district beyond the provisions of the bill.

If, before implementing any provision of the bill, a state agency determined that a waiver or authorization from a federal agency was necessary for implementation of that provision, the bill would direct the agency to request the waiver or authorization and the agency could delay implementing the provision until the waiver or authorization was granted.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

SB 2117 would allow the city of Amarillo's hospital district to draw down federal dollars through the existing sec. 1115 Medicaid waiver to lower the burden of providing uncompensated health care in that district, if the hospital district's voted to do so. The city does not have an existing mechanism to draw down these funds.

The city of Amarillo's non-public hospitals currently spend hundreds of millions of dollars each year to provide uncompensated health care services through their hospitals, and the ability to draw down federal funds through the bill would reduce their financial burden. The bill would not raise taxes, would not create an unfunded mandate, and would not require general revenue funds.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Allowing oversize or overweight vehicles on sections of State Hwy 99

COMMITTEE: Transportation — favorable, without amendment

VOTE: 11 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel, Minjarez, Phillips, Simmons, E. Thompson, Wray

0 nays

2 absent — Pickett, S. Thompson

SENATE VOTE: On final passage, May 1 — 31-0

WITNESSES: *On House companion bill, HB 2778:*
For — Alison Haynes, Richardson Stevedoring and Logistics; Rusty Senac, Chambers County; (*Registered, but did not testify*: Brian Hawthorne, Sheriffs' Association of Texas; Ron Lewis, TGS Cedar Port Industrial Park; Stephanie Simpson, Texas Association of Manufacturers)

Against — None

On — Marc Williams, Texas Department of Transportation; (*Registered, but did not testify*: Mark Marek, Texas Department of Transportation)

BACKGROUND: Transportation Code, ch. 623, subch. M allows Chambers County to issue a permit for the movement of oversize or overweight vehicles carrying cargo on certain state highways located in the county. A permit may authorize the transport of cargo on roads that include a specified portion of the frontage road of State Highway 99.

DIGEST: SB 1291 would change the portion of State Highway 99 for which Chambers County could issue permits for certain oversize or overweight vehicles. It would specify that the county could authorize the transport of cargo on State Highway 99, including the frontage road but excluding any portion of the highway for which payment of a toll was required, between its crossing with Cedar Bayou and its intersection with Interstate Highway 10.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

SB 1291 would clarify that non-tolled main lanes and frontage roads of State Highway 99 could be used for vehicles with certain oversize or overweight permits issued by Chambers County. Current law is unclear and has created confusion on whether oversize or overweight vehicles are allowed on this stretch of highway, which has hindered access for heavy-haul trucks to and from the Port of Houston. Allowing access to oversize and overweight vehicles along this stretch of road was the legislative intent of SB 274 by Williams, enacted by the 83rd Legislature in 2013, and the bill simply would provide clarity based on language recommended by the Texas Department of Transportation.

OPPONENTS SAY:

No apparent opposition.

NOTES:

A companion bill, HB 2778 by Faircloth, was reported favorably from the House Committee on Transportation on May 2.

SUBJECT: Allowing Marfa to use hotel occupancy tax revenue to improve an airport

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

SENATE VOTE: On final passage, April 4 — 29-2 (Burton, V. Taylor)

WITNESSES: *On House companion bill, HB 902:*
For — Justin Bragiel, Texas Hotel and Lodging Association; Chase Snodgrass, Presidio County

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings)

BACKGROUND: Tax Code, ch. 351 allows certain municipalities to impose a hotel occupancy tax of 7 percent on the price paid for a hotel room.

Some observers note that the Marfa Municipal Airport is key to tourism in the area but does not have sufficient capacity and is need of repairs.

DIGEST: SB 440 would allow the municipality described by the bill (Marfa) to use up to 15 percent of its municipal hotel occupancy tax revenue to expand or improve an airport that met the bill's specifications, provided the cumulative amount spent was less than hotel revenue reasonably attributable to guests traveling through the airport over the course of 15 years from the date the city first uses revenue to improve the airport.

This authority would expire either on December 31, 2032, or 10 years after the date the city first uses the revenue to improve the airport.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUBJECT: Changing requirements for authorizing property re-entry and retrieval

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Oliveira, Shine, Romero, Stickland, Villalba, Workman

0 nays

1 absent — Collier

SENATE VOTE: On final passage, April 3 — 31-0

WITNESSES: *On House companion bill, HB 2727*:
For — Bobby Gutierrez, Justice of the Peace and Constables Association of Texas; Brittany Hightower, Texas Advocacy Project; (*Registered, but did not testify*: Arianna Smith, Combined Law Enforcement Associations of Texas (CLEAT); Jama Pantel, Justice of the Peace and Constables Association of Texas; Joseph Green, Travis County Commissioners Court; Kirsha Haverlah)

Against — None

BACKGROUND: Property Code, sec. 24A.002 allows a person who is unable to enter the person's residence or former residence to retrieve personal property because the current occupant is denying the person entry to apply to the justice court for an order authorizing the person to enter the residence accompanied by a peace officer to retrieve specific personal property, including only:

- medicine, medical records, or medical supplies;
- clothing;
- child-care items;
- legal or financial documents;
- checks or bank or credit cards in the applicant's name;
- employment records; or
- personal identification documents.

Sec. 24A.002(c) requires an applicant for entry to execute a bond payable to the current occupant of the residence that is conditioned on the applicant paying all damages for wrongful property retrieval.

Sec. 24A.002(e) authorizes a justice of the peace to issue an order granting the applicant authority to enter the property if the justice finds that:

- the applicant is unable to enter the residence to retrieve personal property because the current occupant has denied them access;
- the applicant is not subject to a protective order or otherwise prohibited by law from entering the residence;
- there is a risk of personal harm to the applicant or the applicant's dependent if the property is not retrieved quickly;
- the applicant is currently or was formerly authorized to occupy the residence according to documentary evidence; and
- the current occupant received notice of the application and was provided an opportunity to contest the application in court.

DIGEST:

CSSB 920 would change the requirements for authorizing access to a residence or former residence.

The bill would allow a justice to issue a writ authorizing entry if the justice found that the current occupant posed a clear and present danger of family violence to the applicant or the applicant's dependent. This finding would satisfy the requirement under current law that an applicant must have been denied access by the current occupant. The bill also would allow a justice to waive the bond requirement for an application concerning family violence.

The bill would allow a justice to issue a writ authorizing entry without providing the required notice and hearing to the occupant if the justice found at a hearing that:

- the current occupant posed a clear and present danger of family violence to the applicant or applicant's dependent;
- the personal harm to the applicant or applicant's dependent would

be immediate and irreparable if the application was not granted; and

- all other requirements of the applicant had been satisfied.

If the justice of the peace had issued a writ authorizing entry without providing notice or hearing to the occupant, the bill would allow the justice to recess the required family violence hearing to notify the current occupant by telephone that the occupant could attend the hearing or bring the personal property in question to the court. The justice would have to reconvene the hearing before 5 p.m. on the same day.

The bill also would add to the list of personal property which could be retrieved under a writ authorizing entry to include copies of electronic records containing legal or financial documents.

The bill would change the document that judges must issue to authorize entry from a court order to a temporary ex parte writ, which could not be valid for a period of more than five days.

The bill would take effect September 1, 2017, and would apply only to an application filed on or after that date.

SUPPORTERS SAY:

CSSB 920 would protect victims of family violence by ensuring safe access with a police escort to retrieve vital medical and personal property in situations in which entering a residence would otherwise pose a clear and present danger. This ability would be afforded only in cases in which re-entry was necessary to prevent immediate and irreparable personal harm.

OPPONENTS SAY:

No apparent opposition.

NOTES:

CSSB 920 differs from the Senate-passed bill by requiring a justice to find that the personal harm to the applicant or dependent would be immediate and irreparable in order to issue a writ of re-entry without providing notice or hearing to the current occupant.

A companion bill, HB 2727 by Lucio, was reported favorably by the Business and Industry Committee on April 25.

SUBJECT: Allowing monetary recovery for frivolous state regulatory actions

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Smithee, Gutierrez, Hernandez, Murr, Neave, Rinaldi, Schofield

0 nays

2 present not voting — Farrar, Laubenberg

SENATE VOTE: On final passage, April 12 — 28-3 (Garcia, Rodríguez, Schwertner)

WITNESSES: No public hearing

BACKGROUND: Civil Practice and Remedies Code, sec. 105.002 allows a party to a civil suit brought by or against a state agency in which the agency asserts a cause of action against the party the ability to recover fees, expenses, and reasonable attorney's fees if the court finds that the action is frivolous, unreasonable, or without foundation and the action is dismissed or judgment is awarded to the party.

DIGEST: SB 813 would authorize a claimant to bring an action against a state agency if the state agency took a regulatory action against the claimant that was frivolous, unreasonable, or without foundation. In bringing such an action, a claimant could recover, in addition to all other costs allowed by law or rule, damages caused by the state agency's frivolous regulatory action, reasonable attorney's fees, and court costs.

A person could recover reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during an administrative proceeding and judicial review of that proceeding if:

- the person prevailed in the judicial review of an administrative proceeding; and
- the state agency was unable to demonstrate that it had good cause for the regulatory action.

The bill would take effect September 1, 2017, and would apply to a regulatory action taken on or after that date.

SUPPORTERS SAY:

SB 813 would provide individuals and businesses with a legal remedy when state government agencies misuse their power in pursuing frivolous regulatory actions by allowing them to recover damages and attorney's fees. Some businesses have incurred tens of thousands of dollars in legal fees, lost revenue, and other costs in responding to regulatory actions that were later found to be unjustified. Small businesses especially are at a disadvantage in regulatory actions and administrative proceedings when compared to the vast resources of the state. The threat of having to pay legal fees for an action that could not be substantially justified in court would be an incentive for agencies to consider whether a contemplated regulatory action was reasonable.

The bill would be an extension of a 1985 law that allows a party in a lawsuit against the state to recover expenses and reasonable attorney's fees if a judge finds the state's claim was frivolous, unreasonable, or without foundation. SB 813 would allow a person to bring a similar claim for fees and costs spent to defend against a regulatory action only if the person won a judicial review of the administrative proceeding and if the state agency failed to demonstrate good cause for the regulatory action.

Concerns that the bill could have a chilling effect on reasonable regulatory actions are unfounded because state agencies would be allowed to present evidence that they acted with good cause. The bill simply would act as a check to ensure state agencies were acting within the reasonable bounds of their authority and were properly supervising their employees.

OPPONENTS SAY:

SB 813 would waive part of the sovereign immunity that allows the state to carry out its functions without being subjected to litigation. It could cost the state treasury money if claimants prevailed in obtaining attorney's fees, damages, and other costs. The bill also could have a chilling effect on state agencies worried about being sued for doing their job of enforcing regulations.

NOTES: A companion bill, HB 2516 by Meyer, was referred to the House Judiciary and Civil Jurisprudence Committee on March 23.

SUBJECT: Creating state jail felony for bestiality, requiring sex offender registration

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Moody, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

2 absent — Hunter, Canales

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 1087:*
For — Andrea Greig, Lakeway Police; Richard Havens, City of Amarillo; Katie Jarl, The Humane Society of the United States; (*Registered, but did not testify:* Micah Harmon, AJ Louderback, Buddy Mills, and Ricky Scaman, Sheriffs' Association of Texas; Chris Kaiser, Texas Association Against Sexual Assault; Bill Kelly, City of Houston Mayor's Office; Kimber Marshall, Texas Humane Legislative Network; Kara Montiel, Texas Federation of Animal Care Societies; Chas Moore, Austin Justice Coalition; Michael Pacheco, Texas Farm Bureau; Royce Poinsett, Texas Veterinary Medical Association; Arianna Smith, Combined Law Enforcement Associations of Texas; Casie Stoughton, City of Amarillo; Bill Davis, Shana Ellison, Denise Lehe, John Shepperd)

Against — None

BACKGROUND: Penal Code, sec. 21.07 makes public lewdness a crime. Under sec. 21.07(a)(4), the offense can be committed if a person knowingly engages in an act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl if the act is in a public place or, if not in a public place, if the person is reckless about whether another is present who will be offended or alarmed by the act. An offense is class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

Penal Code, sec. 42.092 makes cruelty to animals an offense. It is a crime to intentionally, knowingly, or recklessly, commit specific acts, including

torturing an animal or in a cruel manner killing or causing serious bodily injury. The offense has a range of punishments, including a class A misdemeanor and a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000), with repeat offenses carrying higher penalties.

DIGEST:

CSSB 1232 would make bestiality a separate crime in the Penal Code and would eliminate references under the crime of public lewdness to certain acts committed by a person with the anus or genitals of an animal or fowl. The bill describes 10 categories of actions that would define the offense of bestiality, including engaging in an act involving contact between the person's mouth, anus, or genitals and the anus or genitals of an animal or the person's anus or genitals and the mouth of the animal.

Categories within the crime would include possessing, selling, transferring, purchasing, or otherwise obtaining animals with the intent that they be used for the acts described by the bill and organizing, promoting, conducting, or participating as an observer of conduct described by the bill. Causing someone to engage in or aiding a person in the conduct described by the bill would be an offense, as would permitting certain conduct on premises under a person's control, engaging in conduct described by the bill in the presence of a child, and advertising or accepting an offer for an animal with intent that it be used for such conduct.

An offense would be a state-jail felony, except that engaging in certain conduct in the presence of a child or in conduct that resulted in serious bodily injury or death of the animal would be a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

It would be an exception to the application of the section if the conduct engaged in was a generally accepted and otherwise lawful animal husbandry or veterinary practice.

A judge granting community supervision (probation) to a person convicted of bestiality would be authorized to require the defendant to relinquish custody of any animals, prohibit the defendant from possessing or having control over any animals or from residing in a household where

animals were present, and require the defendant to participate in counseling or other appropriate treatment.

The bill would add bestiality to the offenses that require registration in the state's sex offender registry.

The bill would add animals subjected to bestiality to the Health and Safety Code definition of cruelly treated animals, which could allow officials to apply to a court for a warrant to seize the animals. In a hearing to consider issuing such a warrant, a guilty finding for the offense of bestiality would be prima facie evidence that any animal in the person's possession had been cruelly treated, regardless of whether the animal was subjected to the illegal conduct.

The bill would take effect September 1, 2017, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

CSSB 1232 would close a gap in current law that does not adequately protect animals that are sexually abused and does not appropriately handle those who inflict the abuse. Animals are being subject to horrendous acts, some furthered by websites and internet advertising, which should be specifically outlawed.

The great many cases of animal sexual abuse that have been reluctantly dismissed or not pursued by law enforcement authorities illustrates why current law is not adequate. While animal cruelty laws may apply if there was physical injury to an animal, in some cases the abuse is not known until after an incident when a film surfaces, making it hard to substantiate physical injury. In other cases, animal sex abuse occurs in private, and public lewdness laws are ineffective against acts performed in private or not in the presence of someone who would be offended or alarmed by the conduct. The bill would close these loopholes by defining certain specific acts of animal sexual abuse as crimes.

Sexual abuse of animals has been connected to sexual abuse of children, so the bill appropriately would require offenders to register as sex offenders. Animal sexual abuse shares similarities with current offenses that require registration, and requiring these offenders to register would

help the public and youth organizations that consult the registry to better protect children.

The bill is drawn to apply specifically to the cruel sexual abuse of animals and to those who facilitate the abuse, and it would not criminalize legitimate, non-sexual acts. An act constituting an offense would have to have been done knowingly, and the bill would include both specific and general exceptions for widely accepted animal husbandry and veterinary practices to make sure it was targeted at animal sexual abuse. As with all offenses, law enforcement authorities would use discretion to target those committing crimes.

The bill would impose appropriate penalties given the horrific nature of these crimes. Imposing a state-jail punishment or higher for offenses involving children, or serious bodily injury or death of an animal, would ensure that those convicted under the bill were excluded from applicable licenses and professions, and the bill would allow probation conditions to include counseling or treatment. The bill would put Texas in line with most other states that make the sexual assault of animals illegal and with the Federal Bureau of Investigation, which now tracks animal abuse.

OPPONENTS SAY:

Those who harm or abuse animals should be prosecuted under current laws, such as the state's cruelty to animals or public lewdness offenses, rather than under a separate offense for bestiality. CSSB 1232 could establish an offense broad enough in its description that it might capture behaviors beyond those that should be felony criminal offenses. The offense described by the bill could include fondling or touching certain parts of an animal, which could be interpreted in varying ways and would not necessarily be based on sexual gratification, a requirement under other offenses. The offense would include participating as an observer to certain actions, which also could be interpreted broadly. The language could lead to too much reliance on the discretion of law enforcement authorities in deciding what constituted a crime.

The bill's requirement that offenders register as sex offenders could further dilute the usefulness of the registry. It could result in registration by an overly broad group, including offenders who were not threats to the community, and could impose on them the serious consequences of being

labeled as a sex offender.

NOTES:

CSSB 1232 differs in several ways from the Senate-passed version, including that the committee substitute would require sex offender registration for those convicted of bestiality and would create specific exceptions for certain actions relating to generally accepted and otherwise lawful animal husbandry or veterinary practices.

A companion bill, HB 1087 by Alvarado, was reported favorably from the House Criminal Jurisprudence Committee on May 3.

SUBJECT: Prohibiting the use of state money for privately operated high-speed rail

COMMITTEE: Transportation — favorable, without amendment

VOTE: 8 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Minjarez, Simmons, Wray

3 nays — Israel, Phillips, E. Thompson

2 absent — Pickett, S. Thompson

SENATE VOTE: On final passage, April 18 — 26-5 (Garcia, Menéndez, Rodríguez, Watson, Zaffirini)

WITNESSES: *On House companion bill, HB 2172:*
For — Lane Grayson, Ellis County; Blake Beckham and Kyle Workman, Texans Against High-Speed Rail; Terri Hall, Texas TURF, Texans for Toll-Free Highways; and 22 individuals; (*Registered, but did not testify:* Robert Floyd, Delta Troy Interests; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Michael Pacheco, Texas Farm Bureau; Barbara Miles and Christen Workman, Texans Against High-Speed Rail; Trey Duhon, Waller County; and 19 individuals)

Against — Peter LeCody, National Association of Railroad Passengers-Texas Members; Chris Lippincott, Texas Rail Advocates; (*Registered, but did not testify:* Gary Pedigo, Brotherhood of Locomotive Engineers and Trainmen; Anna Holmes, City of Dallas; Chase Bearden, Coalition of Texans with Disabilities; David Cain, The Real Estate Council of Dallas; Dave Dobbs, Texas Association for Public Transportation; Brandi Bird, Transit Coalition of North Texas; David Conley; Nita Davidson; Gordon Walton; Tori Zander)

On — Tim Keith, Texas Central; (*Registered, but did not testify:* Marc Williams, Texas Department of Transportation)

DIGEST: SB 977 would prohibit the Legislature from appropriating money and a state agency from accepting or using state money to pay for a cost of

planning, facility construction or maintenance, or security for, promotion of, or operations of high-speed rail operated by a private entity, except as required under federal or other state law. High-speed rail would mean intercity passenger rail service that was reasonably expected to reach speeds of at least 110 mph.

A state agency would be required to prepare a semiannual report of each expense described above and submit a copy to the Texas Transportation Commission, the comptroller, legislative committees with appropriate jurisdiction, the House speaker, the lieutenant governor, and the governor.

The bill would not preclude or limit the execution of the Texas Department of Transportation's responsibilities under federal or state law.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

SB 977 is a measured approach designed to ensure that only private money would be used to fund a high-speed rail project under development, while allowing the Texas Department of Transportation (TxDOT) to continue in its full capacity as a regulatory agency.

The project under development is estimated to cost between $12 billion and $20 billion to construct, and it has been stated that it will be funded entirely through private investment and not require state funds. However, no high-speed rail has been constructed or operated successfully without public money. Texas is supportive of private business, but concerns have been raised that if the project failed financially, state funds would be needed to either complete the project or return the land to its original condition. This bill would protect taxpayers should the prospective project fail by ensuring that state funds were not used to subsidize, bail out, or otherwise support a private high-speed rail project.

The bill aligns with budget riders in the House- and Senate-passed versions of the general appropriations act directing that no state money be used for private high-speed rail. SB 977 would echo this language in statute to ensure that no state funds were used for the project. Taxpayer spending on transportation in Texas should be directed toward fully funding the maintenance of state highways and building new roads where

needed because Texans rely primarily on cars, not trains, for their transportation needs.

Concerns that the bill unfairly would be aimed at a specific high-speed rail project are unfounded because the bill would prevent state funds from going to any high-speed rail project. The project under development has indicated that it would be funded entirely through private investment, so the bill should not impact its progress. The bill also would ensure that TxDOT still was able to perform all necessary regulatory duties regarding rail and other transportation infrastructure required under state or federal law, including collaborative work with private entities.

The bill would not categorically prevent high-speed rail from being developed in Texas. If a future project was deemed viable and the use of public funds was in the best interests of the public, the Legislature could amend the statute to allow state funding.

OPPONENTS SAY:

SB 977 is unnecessary because the finance plan for the high-speed rail project currently under development does not involve any state funds to build or operate the railway. There are no state appropriations in the budget for the project, and riders in the proposed budget would prevent the Legislature from making such appropriations.

While this bill's provisions would in practice be aimed at a specific high-speed rail project, they also would change state policy so as to close off an avenue for state investments in future transportation options. Establishing a preemptive ban on the use of state money for high-speed rail would result in a long-term, statutory prohibition on any future projects and could discourage innovation. Whether through private enterprise, public-private partnerships, or even public funds for a specific public need, the state would not be able to participate in one of these projects once the bill's language became law.

Further, public and private resources already are intermingled to operate the state's transportation system. Drawing a line at private operation would not be consistent with how TxDOT currently deals with the state highway system's toll roads.

NOTES: A companion bill, HB 2172 by Ashby, was left pending following a public hearing in the House Transportation Committee on May 4.

SUBJECT: Amending process to file overcharged water utility service complaints

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 6 ayes — Larson, Phelan, Ashby, Burns, Frank, Price

1 nay — Lucio

4 absent — Kacal, T. King, Nevárez, Workman

SENATE VOTE: On final passage, April 20 — 21-10 (Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion bill, HB 1964:*
For — Andres Medrano and Lana Reeve, Realpage, Inc.; Howard Bookstaff and Clay Hicks, Texas Apartment Association; (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform; Frank Jackson, Texas Affiliation of Affordable Housing Providers; Felicia Wright, Texas Association of Builders; Laura Matz, Texas Community Association Advocates; DJ Pendleton, Texas Manufactured Housing Association)

Against — Juliana Gonzales, Austin Tenants' Council; Nelson Roach, TTLA; Britton Monts; Martin Weber; (*Registered, but did not testify*: Nate Walker, Texas Low Income Housing Information Service; Victoria Sommerman, Texas Watch; Jason Snell; Andrew Sullo)

On — Tammy Benter, Public Utility Commission

BACKGROUND: Water Code, sec. 13.503 governs submetering rules for individual rental or dwelling units by master meter operators or building owners. The owner or manager of a manufactured home rental community or apartment can impose a service charge of up to 9 percent of submetering costs.

Sec. 13.5031 governs billing systems by manufactured home rental community owners, apartment owners, condominium managers, or others for allocating non-submetered master metered utility service costs. The

rental agreement must contain a clear written description of the calculation method for the allocation of services. An owner or manager may not impose additional charges on a tenant in excess of the charges imposed for utility consumption.

Sec. 13.505 allows a tenant who was overcharged for water utility services to recover three times the amount of overcharge, a civil penalty equal to one month's rent, and attorney's fees and court costs from an owner or manager. An owner or manager is not liable if there is proof the violation was a good faith, unintentional mistake.

DIGEST:

SB 873 would allow a person to file a complaint with the Public Utility Commission (PUC) if an apartment owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violated certain utility cost rules. PUC would have exclusive jurisdiction for these violations.

If PUC found that a tenant had been overcharged, the commission would require an owner or condominium manager to repay the tenant the amount overcharged for submetered or non-submetered water or wastewater services.

The bill also would specify that provisions in Water Code, secs. 13.503 and 13.5031 governing submetering and non-submetering rules would not limit the authority of an owner, operator, or manager to charge a fee relating to the management of chilled water, boiler, heating, ventilation, air conditioning, or other building system unrelated to utility costs.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

SB 873 would align the complaint process for tenants bringing action against a multi-use residence for overcharging water utilities with the processes for gas and electric utilities by allowing tenants to file complaints with the Public Utility Commission (PUC). The bill would cut back on the expansion of unnecessary and costly class-action suits for these cases. Certain online and over-the-phone procedures also would be

available.

The bill would hold landlords accountable. PUC could order a landlord to pay refunds to overcharged tenants, and the commission could impose administrative penalties at its discretion. Tenants would retain the ability to go to court to seek further remediation after completing the formal complaint process through PUC.

Concerns that owners or managers could recover their own water utility costs through administrative fees billed to tenants are unfounded. Current law already prohibits the imposition of additional charges in excess of what was charged for utility consumption.

OPPONENTS SAY:

SB 873 would require tenants to seek remediation through PUC's process, wasting valuable time and money. Most tenants do not live in Austin, where PUC is located, and could not easily navigate the cumbersome process without an attorney.

The bill also would result in decreased penalties for apartment owners and condominium managers that deliberately overcharged tenants. Tenants could not recover remediation or attorney's fees under the process outlined in the bill, aside from the amount of money overcharged, disincentivizing them from seeking remediation at all.

Further, the bill would create a loophole so that an owner or manager could tack additional "administrative" fees on to a tenant's bill to cover the landlord's water service fees.

NOTES:

A companion bill, HB 1964 by Murphy, was placed on the General State Calendar for May 9.

SUBJECT: Requiring list of services and fee schedule for services offered by SSLCs

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Raymond, Miller, Minjarez, Rose, Wu

2 nays — Klick, Swanson

2 absent — Frank, Keough

SENATE VOTE: On final passage, April 26 — 30-1 (Zaffirini), on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 3409:*
For — Susan Payne, PART; Harrison Hiner, Texas State Employees Union; David Perkins; Nona Rogers; (*Registered, but did not testify:* Beverly Barrington, Austin SSLC Family/Guardian Association; Tom Kidd)

Against — (*Registered, but did not testify:* Susan Murphree, Disability Rights Texas)

On — Kyle Piccola, Arc of Texas; Scott Schalchlin, Department of Aging and Disability Services

BACKGROUND: Human Resources Code, sec. 161.080(b) allows a state supported living center (SSLC) to provide nonresidential services to support an individual if:

- the individual receives services in a program funded by the Department of Aging and Disability Services, meets the eligibility criteria for the intermediate care facility for persons with an intellectual disability program, and resides in the same area where the SSLC is located; and
- the provision of services to the individual does not interfere with the provision of services to an SSLC resident.

DIGEST:

SB 547 would remove certain requirements for nonresidents to receive services from state supported living centers (SSLCs). To qualify, individuals no longer would need to be receiving services in a program funded by the department, meet the eligibility criteria for the intermediate care facility for persons with an intellectual disability program, or reside in the area where the SSLC is located.

The bill would require the executive commissioner of the Health and Human Services Commission (HHSC) to establish a list of services that an SSLC could offer to support individuals with developmental disabilities under certain contracts. The executive commissioner also would have to establish procedures for the commission to create, maintain, and amend, as needed, a schedule of fees that an SSLC could charge for these services.

In creating the fee schedule, HHSC would be required to use the reimbursement rate for the applicable service under the Medicaid program or modify that rate with a written justification for the modification and after holding a public hearing. Based on negotiations with a managed care organization, a state supported living center could charge a fee for a service other than the fee provided by the commission's fee schedule.

The HHSC executive commissioner would be required to adopt rules listing the services an SSLC could provide under a contract and the procedures for creating the fee schedule by September 1, 2018.

The bill would take immediate effect if finally passed by a two-thirds vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

SB 547 would remove existing requirements that limit access to nonresidential services provided by State Supported Living Centers (SSLCs) and require the Health and Human Services Commission to set a fee schedule for services that could be provided to individuals in the community. This would benefit individuals with an intellectual or developmental disability by expanding treatment options for those who do not reside at the SSLC. Current law ensures that the provision of services

to nonresidents does not interfere with services to an SSLC's residents.

Individuals with disabilities would not be forced to seek services at SSLCs. Services provided by these centers could be used to address gaps in community-based services.

OPPONENTS SAY:

Expanding SSLC services to nonresidents could detract from the access to and quality of care for residents. The bill also could create unfair competition between taxpayer-funded SSLCs and private sector providers.

NOTES:

A companion bill, HB 3409 by Lambert, was reported favorably by the House Human Services Committee on April 27 and placed on the House General State Calendar for May 8.

SUBJECT: Providing maximum copays for prescriptions under health benefit plans

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Turner, Vo

0 nays

1 absent — Sanford

SENATE VOTE: On final passage, April 19 — 30-1 (Huffines), on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2360:*
For — Chase Bearden, Coalition of Texans with Disabilities; Miguel Rodriguez, Texas Pharmacy Business Council; Steve Hoffart; (*Registered, but did not testify*: Blake Hutson, AARP Texas; Audra Conwell, Alliance of Independent Pharmacists of Texas; Stacey Pogue, Center for Public Policy Priorities; Reginald Smith, Communities for Recovery; Dennis Wiesner, HEB; Will Francis, National Association of Social Workers - Texas Chapter; Simone Nichols-Segers, National MS Society; John Heal, Pharmacy Buying Association d/b/a Texas TrueCare Pharmacies; Dan Hinkle, Texas Academy of Family Physicians; Bradford Shields, Texas Federation of Drug Stores; Duane Galligher, Texas Independent Pharmacies Association; Clayton Stewart, Texas Medical Association; BJ Avery and Tommy Lucas, Texas Optometric Association; David Reynolds, Texas Osteopathic Medical Association; Justin Hudman, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; Bonnie Bruce, Texas Society of Anesthesiologists)

Against —Abigail Stoddard, Prime Therapeutics; Allen Horne; (*Registered, but did not testify*: Melodie Shrader, Pharmaceutical Care Management Association; Wendy Wilson, Prime Therapeutics)

On — Michael Harrold, Express Scripts; (*Registered, but did not testify*: Doug Danzeiser, Texas Department of Insurance)

BACKGROUND:

Insurance Code, ch. 1369 governs the distribution of health insurance benefits related to prescription drugs and devices.

DIGEST:

CSSB 1076 would prohibit a health benefit plan issuer that covered prescription drugs from requiring an individual covered under a health benefit plan to make a payment for a prescription drug at the point of sale that was greater than the lesser of:

- the applicable copayment;
- the allowable claim amount for the prescription drug; or
- the amount an individual would pay for the drug without using a benefit plan or any other source of drug benefits or discount.

The bill would take effect September 1, 2017, and would apply only to a health benefit plan issued, delivered, or renewed on or after January 1, 2018.

SUPPORTERS SAY:

CSSB 1076 would prevent pharmacy benefit managers (PBMs) from engaging in the deceptive and profiteering practice of insurance "clawbacks," in which the PBM requires a pharmacy to collect an excessively high copayment and remit the excess amount to the PBM. This practice leaves insured consumers worse off than if they had not been covered by a benefit plan, makes prescription medication less accessible, and drives health care inflation.

The bill would enable pharmacies to provide quality customer service without violating contractual obligations. Under current "clawback" systems, pharmacies are prohibited from notifying consumers about less expensive options to receive the same drugs.

The bill would not infringe upon the ability of PBMs to freely contract with pharmacies. The bill's language is tailored to regulate only a patient's maximum copay at the point of sale, which would not be affected by future performance-based fees. Therefore, PBMs and pharmacies could still include performance-based payments in their contracts.

OPPONENTS SAY:

CSSB 1076 could infringe upon private contracts between pharmacies and PBMs by preventing performance-based payment. The "allowable claim

amount" of a benefit plan is often subject to a PBM's review of a pharmacy's performance. The bill could prevent future adjustments to the allowable claim amount, effectively preventing performance-based contracting.

NOTES:

CSSB 1076 differs from the Senate-passed bill in that, when setting terms for the maximum payment allowed, the committee substitute would include the amount an individual would pay for a drug without using a benefit plan or other discount, while the Senate-passed bill would have included the negotiated and allowable claim amount.

A companion bill, HB 2360 by G. Bonnen, was reported favorably by the House Insurance Committee on April 26.